

Pro Se 14 (Rev. 12/16) Complaint for Violation of Civil Rights (Prisoner)

UNITED STATES DISTRICT COURT

for the

Southern District of New York



Criminal Division

18 CV 2670

Case No.

(to be filled in by the Clerk's Office)

Kevin Fritz Lamerique

Plaintiff(s)

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

-v-

United States of America

Defendant(s)

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names. Do not include addresses here.)

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COMPLAINT FOR VIOLATION OF CIVIL RIGHTS

(Prisoner Complaint)

NOTICE

Federal Rules of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

Except as noted in this form, plaintiff need not send exhibits, affidavits, grievance or witness statements, or any other materials to the Clerk's Office with this complaint.

In order for your complaint to be filed, it must be accompanied by the filing fee or an application to proceed in forma pauperis.

I. The Parties to This Complaint**A. The Plaintiff(s)**

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name

Kevin Fritz Lamerique

All other names by which
you have been known:

ID Number

3627069

Current Institution

Western Regional Jail

Address

One O'Hanlon Place

Barboursville

WV

25504

City

State

Zip Code

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. Make sure that the defendant(s) listed below are identical to those contained in the above caption. For an individual defendant, include the person's job or title (*if known*) and check whether you are bringing this complaint against them in their individual capacity or official capacity, or both. Attach additional pages if needed.

Defendant No. 1

Name

United States of America

Job or Title (*if known*)

Shield Number

Employer

Address

City

State

Zip Code

☐

Individual capacity

☐

Official capacity

Defendant No. 2

Name

Job or Title (*if known*)

Shield Number

Employer

Address

City

State

Zip Code

☐

Individual capacity

☐

Official capacity

Defendant No. 3

Name _____

Job or Title (if known) _____

Shield Number _____

Employer _____

Address _____

City _____

State _____

Zip Code _____

☐

Individual capacity

☐

Official capacity

Defendant No. 4

Name _____

Job or Title (if known) _____

Shield Number _____

Employer _____

Address _____

City _____

State _____

Zip Code _____

☐

Individual capacity

☐

Official capacity

II. Basis for Jurisdiction

Under 42 U.S.C. § 1983, you may sue state or local officials for the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” Under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), you may sue federal officials for the violation of certain constitutional rights.

A. Are you bringing suit against (check all that apply):

☒Federal officials (a *Bivens* claim)☐

State or local officials (a § 1983 claim)

B. Section 1983 allows claims alleging the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” 42 U.S.C. § 1983. If you are suing under section 1983, what federal constitutional or statutory right(s) do you claim is/are being violated by state or local officials? In case 7:17-mj-09524-UA the Honorable Judge Judith C. McCarthy signed a medical order to the wardens of Westchester County Jail, or any other detention facility directing that “Correctional Facilities provide the defendant with full medical examination and provide any additional necessary treatment.” This order was submitted on December 26, 2017 in White Plains, NY. Since the plaintiff was incarcerated he has requested medical treatment at four separate facilities which has not been received.

C. Plaintiffs suing under *Bivens* may only recover for the violation of certain constitutional rights. If you are suing under *Bivens*, what constitutional right(s) do you claim is/are being violated by federal officials?

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The medical order signed by the Honorable Judge Judith C. McCarthy (attached) is not being followed as the plaintiff has not received one medical treatment since their incarceration. The plaintiff has severe Multiple Sclerosis and requires treatment of Tysabri (natalizumab), an intravenous injection given once every 4 weeks which must be administered by a healthcare professional at licensed locations which include most major hospitals.

- D. Section 1983 allows defendants to be found liable only when they have acted "under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia." 42 U.S.C. § 1983. If you are suing under section 1983, explain how each defendant acted under color of state or local law. If you are suing under *Bivens*, explain how each defendant acted under color of federal law. Attach additional pages if needed.

III. Prisoner Status

Indicate whether you are a prisoner or other confined person as follows (*check all that apply*):

- ☒ Pretrial detainee
- ☐ Civilly committed detainee
- ☐ Immigration detainee
- ☐ Convicted and sentenced state prisoner
- ☐ Convicted and sentenced federal prisoner
- ☐ Other (*explain*) _____

IV. Statement of Claim

State as briefly as possible the facts of your case. Describe how each defendant was personally involved in the alleged wrongful action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

- A. If the events giving rise to your claim arose outside an institution, describe where and when they arose.

- B. If the events giving rise to your claim arose in an institution, describe where and when they arose.
- On or about January 19, 2018, Philadelphia Medical Center
 - On or about February 1, 2018, Oklahoma Federal Detention Center
 - On or about March 14, 2018, Carter County Jail
 - On or about March 19, 2018, Carter County Jail
 - On or about March 21, 2018, Carter County Jail

- C. What date and approximate time did the events giving rise to your claim(s) occur?
On or about January 19, 2018 in the morning
On or about February 1, 2018 all day
On or about March 14, 2018 all day
On or about March 19, 2018 all day
On or about March 21, 2018 in the morning
-
- D. What are the facts underlying your claim(s)? *(For example: What happened to you? Who did what? Was anyone else involved? Who else saw what happened?)*
On or about January 19, the plaintiff woke up due to his Multiple Sclerosis and couldn't stand to travel to the restroom. The corrections officer called the nurse who responded that they could not do anything unless the plaintiff was almost dead or passed out.
On or about February 1st, the plaintiff had problems with his balance due to his MS; he submitted a form to see the doctor, the doctor pushed back their appointment. The plaintiff was removed from Oklahoma Federal Detention Center and never saw the doctor.
On or about March 14, The plaintiff was having a Multiple Sclerosis attack which included spasms and numbness in their face, neck, arm and leg.
On or about March 19, The plaintiff experienced complete paralysis in their right leg and right foot the nurse confirmed that the plaintiff was indeed paralyzed. They prescribed ibuprofen and prednisone
-

V. Injuries

If you sustained injuries related to the events alleged above, describe your injuries and state what medical treatment, if any, you required and did or did not receive.

The plaintiff has experienced extreme pain in his body as a result of not receiving any treatments for the last 3 months. Additionally, the plaintiff has been temporarily paralyzed due to each facility neglecting to provide him the proper care. The plaintiff needs to go to a hospital in order to receive his treatments of Tysabri. Additionally, since the plaintiff's transfer to Western Regional Detention Center which was forced upon him by the US Marshals, on March 21, 2018 the plaintiff has been locked in a cell for 23 hours a day only allowed to exit his cell once a day to make a phone call. As of today, March 25, 2018 the plaintiff has not been able to shower during his time at Western Regional Detention Center. The Eighth Amendment states that "excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted". The plaintiff has a serious medical condition and the deliberate indifference towards this condition gives rise to an Eighth Amendment violation, as well as violating the medical order written by the Honorable Judge Judith C. McCarthy.

VI. Relief

State briefly what you want the court to do for you. Make no legal arguments. Do not cite any cases or statutes. If requesting money damages, include the amounts of any actual damages and/or punitive damages claimed for the acts alleged. Explain the basis for these claims.

The plaintiff requests that the court send him to a hospital that will provide him his treatments for the remainder of time that he is incarcerated. The plaintiff also requests that if he is having an attack the jail arrange for him to be brought to the nearest hospital with a healthcare professional that is licensed to administer Tysabri. The plaintiff also requests that he get transferred back to Carter County Detention Center for the duration of his incarceration.

VII. Exhaustion of Administrative Remedies Administrative Procedures

The Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e(a), requires that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

Administrative remedies are also known as grievance procedures. Your case may be dismissed if you have not exhausted your administrative remedies.

A. Did your claim(s) arise while you were confined in a jail, prison, or other correctional facility?

☒ Yes

☐ No

If yes, name the jail, prison, or other correctional facility where you were confined at the time of the events giving rise to your claim(s).

MDC Brooklyn
FDC Philadelphia
FTC Oklahoma City
Carter County Detention Center
Western Regional Detention Center

B. Does the jail, prison, or other correctional facility where your claim(s) arose have a grievance procedure?

☒ Yes

☐ No

☐ Do not know

C. Does the grievance procedure at the jail, prison, or other correctional facility where your claim(s) arose cover some or all of your claims?

☐ Yes

☒ No

☐ Do not know

If yes, which claim(s)?

- D. Did you file a grievance in the jail, prison, or other correctional facility where your claim(s) arose concerning the facts relating to this complaint?

☒ Yes

☐ No

If no, did you file a grievance about the events described in this complaint at any other jail, prison, or other correctional facility?

☐ Yes

☐ No

- E. If you did file a grievance:

1. Where did you file the grievance?
Carter County Detention Center

-
2. What did you claim in your grievance?
The plaintiff, Kevin Fritz Lamerique needs to be hospitalized to receive his treatment as his face and leg have gone completely numb. The plaintiff has severe Multiple Sclerosis and lesions in his brain which causes his brain to swell up, and causes temporarily paralysis.

-
3. What was the result, if any?
The nurse at the detention center checked his temperature and vital signs and said that he was okay, to quote "unless if you're dying we cannot send you to the hospital". The nurse confirmed with the doctor who was on the phone that the plaintiff was in fact paralyzed. The doctor prescribed the plaintiff Ibuprofen for the pain and steroids (Prednisone 30 mg) to be taken twice daily.

-
4. What steps, if any, did you take to appeal that decision? Is the grievance process completed? If not, explain why not. *(Describe all efforts to appeal to the highest level of the grievance process.)*
The plaintiff asked to see the nurse, the doctor, the sergeant and the captain. The only person the plaintiff saw in person was the nurse. The plaintiff told the nurse that the steroids as prescribed by the doctors are not good for his condition. The plaintiff knew this because his doctors in NY told him not to take steroids. The nurse responded that if the plaintiff does not take the steroids then he is denying their treatment. The plaintiff took the pills as prescribed.
-

F. If you did not file a grievance:

1. If there are any reasons why you did not file a grievance, state them here:

2. If you did not file a grievance but you did inform officials of your claim, state who you informed, when and how, and their response, if any:

G. Please set forth any additional information that is relevant to the exhaustion of your administrative remedies.

(Note: You may attach as exhibits to this complaint any documents related to the exhaustion of your administrative remedies.)

VIII. Previous Lawsuits

The “three strikes rule” bars a prisoner from bringing a civil action or an appeal in federal court without paying the filing fee if that prisoner has “on three or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

To the best of your knowledge, have you had a case dismissed based on this “three strikes rule”?

☐ Yes

☒ No

If yes, state which court dismissed your case, when this occurred, and attach a copy of the order if possible.

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A. Have you filed other lawsuits in state or federal court dealing with the same facts involved in this action?

☐ Yes

☒ No

B. If your answer to A is yes, describe each lawsuit by answering questions 1 through 7 below. *(If there is more than one lawsuit, describe the additional lawsuits on another page, using the same format.)*

1. Parties to the previous lawsuit

Plaintiff(s) _____

Defendant(s) _____

2. Court *(if federal court, name the district; if state court, name the county and State)*

3. Docket or index number

4. Name of Judge assigned to your case

5. Approximate date of filing lawsuit

6. Is the case still pending?

☐ Yes

☐ No

If no, give the approximate date of disposition. _____

7. What was the result of the case? *(For example: Was the case dismissed? Was judgment entered in your favor? Was the case appealed?)*

C. Have you filed other lawsuits in state or federal court otherwise relating to the conditions of your imprisonment?

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☐ Yes

☒ No

D. If your answer to C is yes, describe each lawsuit by answering questions 1 through 7 below. *(If there is more than one lawsuit, describe the additional lawsuits on another page, using the same format.)*

1. Parties to the previous lawsuit

Plaintiff(s) _____

Defendant(s) _____

2. Court *(if federal court, name the district; if state court, name the county and State)*

3. Docket or index number

4. Name of Judge assigned to your case

5. Approximate date of filing lawsuit

6. Is the case still pending?

☐ Yes

☐ No

If no, give the approximate date of disposition _____

7. What was the result of the case? *(For example: Was the case dismissed? Was judgment entered in your favor? Was the case appealed?)*

IX. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: 03/22/2018

Signature of Plaintiff

Ashley Carrington, as next friend of Kevin Fritz Lamerique



Printed Name of Plaintiff

Kevin Fritz Lamerique

Prison Identification #

3627069

~~Prison Address~~

Address designated for
Service

202 8th Street Apartment 2

Jersey City

NJ

07302

City

State

Zip Code

B. For Attorneys

Date of signing: _____

Signature of Attorney

Printed Name of Attorney

Bar Number

Name of Law Firm

Address

City

State

Zip Code

Telephone Number

E-mail Address

CLOSED

**U.S. District Court
Southern District of New York (White Plains)
CRIMINAL DOCKET FOR CASE #: 7:17-mj-09524-UA-1**

Case title: USA v. Lamerique

Date Filed: 12/26/2017

Date Terminated: 12/26/2017

Assigned to: Judge Unassigned

Defendant (1)

Kevin Fritz Lamerique
TERMINATED: 12/26/2017

represented by **Daniel Adam Hochheiser**
Law Offices of Daniel A. Hochheiser
760 White Plains Road, Suite 101
Scarsdale, NY 10583
646-863-4246
Fax: 646-863-4247
Email: dah@hochheiser.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: CJA Appointment

Pending Counts

None

Disposition**Highest Offense Level (Opening)**

None

Terminated Counts

None

Disposition**Highest Offense Level
(Terminated)**

None

Complaints

21:846=CD.F

Disposition**Plaintiff****USA**

represented by **Olga I Zverovich**
United States Attorney's Office SDNY
300 Quarropas Street
White Plains, NY 10601
914-993-1927
Email: olga.zverovich@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: Assistant US Attorney

Date Filed	#	Docket Text
12/26/2017		Arrest (Rule 5(c)(3)) of Kevin Fritz Lamerique. (lnl) (Entered: 12/27/2017)

12/26/2017	<u>1</u>	RULE 5(c)(3) AFFIDAVIT of George Gjelaj, Special Agent, FBI, from the United States District Court – Southern District of New York, as to Kevin Fritz Lamerique. (Signed by Judge Magistrate Judge Judith C. McCarthy on 12/26/2017) (lnl) (Entered: 12/27/2017)
12/26/2017		Minute Entry for proceedings held before Magistrate Judge Judith C. McCarthy: Initial Appearance in Rule 5(c)(3) Proceedings as to Kevin Fritz Lamerique held on 12/26/2017. Appearance entered by Olga I Zverovich for USA, Daniel Adam Hochheiser for Kevin Fritz Lamerique. The defendant is advised of his rights and the charges against him. Financial affidavit approved. Daniel Hochheiser is appointed to represent the defendant. The defendant is ordered detained. The Court denies the government's request for an exclusion of time under the Speedy Trial Act. (Court Reporter Courtflow) (lnl) (Entered: 12/27/2017)
12/26/2017	<u>2</u>	MEDICAL ORDER as to Kevin Fritz Lamerique. (Signed by Magistrate Judge Judith C. McCarthy on 12/26/2017) (lnl) (Entered: 12/27/2017)
12/26/2017	<u>3</u>	COMMITMENT TO ANOTHER DISTRICT as to Kevin Fritz Lamerique. Defendant committed to the United States District Court – Southern District of West Virginia. (Signed by Magistrate Judge Judith C. McCarthy on 12/26/2017)(lnl) (Entered: 12/27/2017)
12/26/2017	<u>4</u>	CJA 23 Financial Affidavit by Kevin Fritz Lamerique. APPROVED. (Signed by Judge Magistrate Judge Judith C. McCarthy) (lnl) (Entered: 12/27/2017)
12/26/2017		RULE 5(c)(3) DOCUMENTS SENT as to Kevin Fritz Lamerique from the U.S.D.C. Southern District of New York to the United States District Court – Southern District of West Virginia. Sent certified copies of: Rule 5(c)(3) Documents, the docket sheet, and letter of acknowledgment. Mailed via Federal Express AIRBILL # 1Z A74 Y45 23 1001 960 2 on 12/27/2017. (lnl) (Entered: 12/27/2017)
02/28/2018	<u>5</u>	ORDER DISMISSING MAGISTRATE JUDGE COMPLAINT as to Kevin Fritz Lamerique. (Signed by Magistrate Judge Lisa Margaret Smith on 2/28/2018) (lnl) (Entered: 02/28/2018)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA,

Plaintiff,

MEDICAL ORDER

-against-

17 Mag. 9524

KEVIN FRITZ LAMERIQUE,

Defendant.
-----X

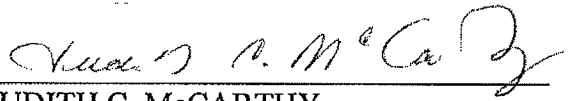
**TO THE WARDENS OF THE WESTCHESTER COUNTY JAIL, OR ANY OTHER
DETENTION FACILITY:**

The above-named defendant has been remanded to the custody of the U.S. Marshals following an appearance before this Court. During the proceeding, defense counsel informed the Court that the defendant has multiple sclerosis.

The Court directs the Correctional Facility to provide the defendant with a full medical examination and provide any additional necessary medical treatment.

Dated: December 26, 2017
White Plains, New York

SO ORDERED:



JUDITH C. McCARTHY
United States Magistrate Judge

